S.B. CIVIL MISC. APPEAL NO. 710/2007
(Bal Chand & ors. Vs. Bhal Singh & ors.)

Date of Order :: 22nd February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Rajendra Charan for the appellants

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By way of this appeal, the claimants seek enhancement over the amount of Rs.2,77,000/- with interest at the rate of 6% per annum awarded by the Tribunal towards compensation on account of accidental death of Smt. Chandi Devi, about 40 years of age, wife of the appellant No.1 and mother of the appellants Nos.2 to 5.

For quantification of compensation, the Tribunal has referred to the assertion of the claimants and their oral evidence that the deceased was earning about Rs.5,000/- per month in fruits and vegetable vending but has observed that such assertion was not supported by any documentary evidence and was not proved. For want of cogent and reliable evidence about the earnings of the deceased, the Tribunal has put an estimate on her monthly income at Rs.2,100/- on the basis of wages of Rs.70/- per day; and deducting one-third on personal expenditure has taken annual loss of dependency at Rs.16,800/- and with application of multiplier of 15 has assessed pecuniary loss at Rs.2,52,000/-; and while allowing Rs.20,000/- towards non-pecuniary loss and Rs.5,000/- towards funeral expenses has awarded compensation in the sum of Rs.2,77,000/- and has also allowed interest at the rate of 6% per annum.

The award aforesaid is sought to be questioned as being low and inadequate with the submissions that the Tribunal has not applied proper multiplier and has erred in not taking income of the deceased at Rs.5,000/- per month though not controverted by the non-applicants; and that the rate of interest is also on the lower side. The submissions do not merit acceptance.

The claimants in the present case came out with assertion of monthly income of the deceased at Rs.5,000/- and suggested her being engaged in fruits and vegetable vending but failed to corroborate their submissions by any cogent evidence. Mere oral statements of the claimant-husband and his witnesses could not have been taken as conclusive proof in relation to such income assertions; nor mere want of rebuttal could have been taken conclusive. A reasonable estimate on the income of the deceased particularly for the purpose of assessing loss for the claimants is dependant upon a variety of facts, factors and circumstances; and want of rebuttal could also be one of the circumstances relevant; yet cannot be taken decisive of the point in every case. For that matter, in a given case even an admission of the non-applicants about the income and contribution might not be taken conclusive; because ultimately just compensation admissible in each individual case is to be assessed, considering an overall picture.

In the fact situation of the present case and for the suggestions made by the claimants, the Tribunal cannot be said to have erred in putting an estimate on the earnings of the deceased; and the estimate so put, of annual income at Rs.25,200/-, cannot be said to be wholly inadequate. The Tribunal has reasonably deducted only one-third and taken annual loss of dependency at Rs.16,800/-. The application of

multiplier of 15 cannot be said to be erroneous looking to the age of the deceased at 40 years and the overall facts and circumstances of the case. The Tribunal has allowed other components of loss also on a reasonable scale. Rate of interest at 6% per annum, in the award made in the month of September 2005, though moderate, cannot be said to be entirely improper.

In the ultimate analysis, the award in question cannot be said to be too low or grossly inadequate so as to warrant interference in appeal.

The appeal fails and is, therefore, dismissed summarily.

MK **(DINESH MAHESHWARI), J.**